

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

ANDRE JEROME LOCKETT,

Appellant.

No. 33643-0-II

UNPUBLISHED OPINION

BRIDGEWATER, J. — Andre Jerome¹ Lockett appeals a determination that he “used” his car when he possessed cocaine. We hold that substantial evidence supported the finding that he concealed the cocaine in the car and this supported the court’s conclusion that he “used” the car in the commission of a felony. Thus, RCW 46.20.285(4) required the Department of

¹ We note that Lockett’s middle name is spelled as Jerame in some portions of the record. Following the charging document and the pleas agreement, we use the name Jerome.

Licensing to revoke Lockett's license for one year. We affirm.

FACTS

Lockett was arrested for operating a motor vehicle without a license. During the search incident to arrest, the arresting officer found cocaine on Lockett's person, lying on the driver's side of the seat, and "between the seats underneath the split in the front seats on the floorboards." Clerk's Papers (CP) at 42. Accordingly, the State charged Lockett with unlawful possession of a controlled substance—cocaine,² a felony and obstructing a law enforcement officer. Lockett entered a *Newton*³ plea to these charges, and the trial court accepted it.

The trial court then ordered a separate hearing to determine whether Lockett used a motor vehicle in the commission of the felony. At the hearing, the trial court entered a finding that Lockett was a large man. Furthermore, the trial court found that the cocaine was concealed, and based on this finding, it concluded that Lockett used the car in the commission of a felony. Under RCW 46.20.285(4), this conclusion required the Department of Licensing to revoke Lockett's license. Lockett now appeals the trial court's finding.

ANALYSIS

Lockett argues that the trial court erred in not applying a subjective test to determine whether he used a car in the commission of the felony. This error of law, he contends, caused the trial court to erroneously find that he concealed drugs in the car. The State contends that Lockett is really challenging the finding that he concealed drugs in the car and the conclusion that

² RCW 69.50.4013(1).

³ *State v. Newton*, 87 Wn.2d 363, 552 P.2d 682 (1976).

concealment constitutes use. We agree with the State's assessment. Because Lockett ultimately challenges its validity, we first review the trial court's finding that Lockett concealed cocaine.

We review a trial court's findings of fact and conclusions of law in two steps. First, we review findings of fact under a "substantial evidence standard, defined as a quantum of evidence sufficient to persuade a rational fair-minded person the premise is true." *Sunnyside Valley Irrigation Dist. v. Dickie*, 149 Wn.2d 873, 879, 73 P.3d 369 (2003). Applying this deferential standard, we view all reasonable inferences from the evidence in the light most favorable to the prevailing party. *Smith v. Hansen, Hansen & Johnson, Inc.*, 63 Wn. App. 355, 363, 818 P.2d 1127 (1991), *review denied*, 118 Wn.2d 1023 (1992). Where there is substantial evidence, we will not substitute our judgment for that of the trial court even though we might have resolved a factual dispute differently. *Sunnyside*, 149 Wn.2d at 879-80. Second, we determine whether the findings of fact support the conclusions of law. *Landmark Dev., Inc. v. City of Roy*, 138 Wn.2d 561, 573, 980 P.2d 1234 (1999). We review the conclusions de novo. *Sunnyside*, 149 Wn.2d at 880.

Applying this standard, we find that the record contains substantial evidence to support the trial court's finding that the cocaine was concealed. It is undisputed that "[t]he key fact in this matter is that [c]ocaine was between and underneath the split in the front seats." CP at 42. From these facts, a rational fair-minded person could reasonably infer that Lockett intentionally placed the drug underneath the seats to conceal it from the arresting officer. Thus, the trial court found that "the cocaine was therefore concealed." CP at 42. Because the cocaine was underneath the seats and this evidence is sufficient to persuade a rational fair-minded person that he intentionally

placed it there, substantial evidence supports the trial court's finding that Lockett concealed the cocaine.

We interpret this finding to mean that Lockett intentionally concealed the cocaine. Lockett appears to agree; he interprets the trial court's finding to mean that "[he] concealed the cocaine." Br. of Appellant at 6. Though the trial court could have drawn other reasonable inferences from the fact the drugs were between the seats, we need not address them. *See Sunnyside*, 149 Wn.2d at 879-80. We therefore uphold the trial court's finding that Lockett concealed drugs in the car.

Next, we review the trial court's conclusion of law to determine whether concealment constitutes "use" of a motor vehicle. Because the ultimate conclusion of law was that Lockett used a motor vehicle in the commission of possessing drugs, RCW 46.20.285(4), we must address whether the findings of fact support that conclusion.

In concluding that Lockett used the vehicle in committing possession, the trial court relied on *State v. Batten*, 140 Wn.2d 362, 997 P.2d 350 (2000). The *Batten* court held that "where the conviction is a possessory felony . . . the possession must have some reasonable relation to the operation of a motor vehicle or that the use of the motor vehicle must contribute in some reasonable degree to the commission of the felony." *Batten*, 140 Wn.2d at 365. The court further held that "[e]mploying a vehicle as a place to store and conceal the weapon . . . creates a sufficient relationship between the use of the vehicle and the crime of unlawful possession of the weapon to [trigger license revocation]." *Batten*, 140 Wn.2d at 366.

We agree with the trial court and read *Batten* to hold that where a defendant conceals

drugs in a car, there is a sufficient relationship between the use of the vehicle and the crime of unlawful possession to trigger license revocation. *Batten*, 140 Wn.2d at 366. Because Lockett purposely concealed cocaine in the car, the trial court correctly concluded that he “used” the car in the commission of the charged felony.

Furthermore, our Supreme Court held that merely storing drugs in a car is enough to constitute use. *Batten*, 140 Wn.2d at 366. In *Batten*, the court also found that Batten stored a methamphetamine-coated spoon and cotton ball in the car’s console between the front seats. *Batten*, 140 Wn.2d at 363, 366. Even though the drug paraphernalia was not hidden from view and the court did not refer to the length of time that the paraphernalia was in the car, the court held that using a portion of the car as a repository for the drug created “a sufficient relationship between the contraband and the vehicle to bring the possession of the substance within the ambit of the statute.” *Batten*, 140 Wn.2d at 366. *Batten* thus holds that intentionally placing drugs in a car creates a sufficient relationship between the vehicle use and the unlawful possession to support the revocation of a defendant’s license. Therefore, so long as there is sufficient evidence to indicate that Lockett intentionally placed drugs in the car, his license should be revoked.

We turn now to Lockett’s argument that the trial court erred by not applying a subjective test to determine whether he used the car. We agree that *Batten* requires some level of subjective intent. In *Batten*, our Supreme Court defined “used” as “employed in accomplishing something.” *Batten*, 140 Wn.2d at 365 (quoting *State v. Batten*, 95 Wn. App. 127, 128, 974 P.2d 879 (1999) (quoting Webster’s Third New International Dictionary 2524 (3d ed. 1966)), *aff’d*, 140 Wn.2d 362 (2000))). We need not decide what level of subjective intent is necessary to constitute use

because we read the trial court's finding to mean that Lockett intentionally concealed the cocaine in the car. Intentionally concealing drugs in a car is sufficient to fall within the ambit of RCW 46.20.285(4). *Batten*, 140 Wn.2d at 365.

In any case, the trial court's conclusion, that it would not use a subjective test, is ambiguous and is not a true conclusion of law; rather, it describes the trial court's thought process.⁴ In addition to rejecting a subjective test, the trial court also declined to "adopt a rule that the mere presence of the controlled substances in the vehicle triggers license revocation." CP at 42. We interpret this to mean that the trial court did consider Lockett's intent to the extent that he intentionally placed the drugs in the car but refused to determine Lockett's exact purpose for the use of the drugs, e.g., delivery or use. We agree that the trial court needed only to determine if Lockett intentionally concealed the drugs in the car; it need not have speculated why Lockett chose to conceal the drugs.

The finding of fact—that the drugs were concealed—necessarily includes the intent to conceal the cocaine and supports the trial court's conclusion. Therefore, the trial court's conclusion—that because Lockett concealed drugs in the car, he "used" the car in the commission of a felony—is correct.

⁴ Conclusion of law number three reads: "The Court declines to use a subjective test to determine what the Defendant's subjective use of the vehicle *vis-à-vis* the controlled substances." CP at 42.

Affirmed.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

Bridgewater, J.

We concur:

Houghton, P.J.

Hunt, J.